IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7773 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI MAFATLAL NAI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 15.9.1999 Annexure : A passed by Respondent No. 1 which he has passed in exercise of

powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is an "immoral traffic offender" within the meaning of Sec.2(g) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on one case lodged in D.C.B. Police Station of Ahmedabad City against the detenu, which is referred to in grounds of detention Annexure : C, and that case is pending before the Court awaiting trial. The detaining authority also placed reliance on statements of two anonymous witnesses whole identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, such statements were verified on 15.9.1999 and the order came to be passed on the same day i.e. on 15.9.1999. That order came to be executed on the petitioner on 23.6.2000. That order has been challenged in this writ petition.

3. Though Rule has been served upon each respondent, the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Shri A.S.Dave, the learned advocate for the petitioner has argued that the detaining authority has placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act but looking to the respective dates of statements, date of verification of said statements and date of passing order of detention, said claim of privilege is not genuine, and therefore, it violates mandate given in Art.22(5) of the Constitution of India. He has placed reliance on case of KALIDAS CHANDUBHAI KAHAR Vs. STATE OF GUJARAT & OTHERS, reported in 1993(2) G.L.R. 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec.9(2) of the Act. In this case, from papers of grounds of detention, it appears that he had no time to do such exercise, and therefore, the privilege claimed by him is not genuine. When he verified the statements of two witnesses on 15.9.1999, and passed an order of detention on the same day i.e. on 15.9.1999, it can be said that the privilege claimed by him is not genuine. Looking to the facts and circumstances of the present case, this

present case squarely falls within the four corners of the case cited by Shri Dave.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 15.9.1999 passed by Respondent No.2 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date:17.10.2000. (H.H.MEHTA,J.)
ccshah